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7 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**
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9 IN RE CALIFORNIA WATERFIX
CALIFORNIA DEPARTMENT OF WATER
10 RESOURCES AND U.S. BUREAU OF
RECLAMATION PETITION FOR
11 CHANGES IN WATER RIGHTS, POINT OF
DIVERSION/RE-DIVERSION
12

**WESTLANDS WATER DISTRICT'S
RECOMMENDATIONS REGARDING
PART 1 ISSUES**

13 In their December 19, 2016, ruling letter, the Hearing Officers invited the parties to identify
14 any issues those parties would like to address in closing briefs at the conclusion of Part 1, together
15 with an explanation why each of the issues is more appropriately briefed at the conclusion of Part 1
16 rather than Part 2.

17 Though below we will provide a more specific explanation for the need for each issue to be
18 briefed at the conclusion of Part 1, generally, Westlands Water District recommends that briefing each
19 of the below issues at the conclusion of Part 1 is appropriate for a number of reasons. First, from the
20 very beginning, the State Water Board bifurcated the hearing into two parts (October 30, 2015, Notice
21 of Petition and Notice of Public Hearing and Pre-Hearing Conference); there is little utility in doing so
22 without some kind of briefing that addresses the issues presented during each part at that part's
23 conclusion – otherwise, the State Water Board may just as well have listed the issues to be addressed
24 in order without such a bifurcation. The Hearing Officers have ratified this bifurcation throughout the
25 proceeding. Second, through the course of Part 1, we have already experienced some unintended
26 conflation of the two parts' respective issues. Requiring issues to be briefed at the conclusion of Part
27 1 will serve to eloquently combat this conflation by specifically identifying those issues to be
28 addressed during Part 1, and remaindering the others to Part 2 as the Hearing Officers intended.

1 Further, requiring briefing on those issues presented in Part 1 will serve the useful function of
2 addressing issues and facts which arose during that part while still relatively familiar to the Hearing
3 Officers, State Water Board staff, and to the parties. This serves the function of ensuring complete
4 identification and briefing of the myriad issues presented in this proceeding, and also avoids the kind
5 of conflation discussed above. Finally, the State Water Board’s standard practice in these species of
6 complicated, multi-staged water rights proceedings supports the specific identification and briefing of
7 issues into separate parts in the current proceeding.

8 Accordingly, Westlands proposes the following four issues for briefing at the conclusion of
9 Part 1, though notes that each of these primary issues raise any number of related and subordinate
10 issues which we expect would be addressed in the closing briefs as well.

11 1. Some parties contend that allowing the new point of diversion needed for the project
12 would in effect create a new water right. The State Water Board has explained that “[a] change may
13 result in the creation of a new right if it increases the quantity of water diverted under the existing
14 right, for example, by appropriating a greater amount of water, increasing the season of diversion, or
15 using a different source of water.” (Decision 1651, 2012 WL 5494093, at *22 (Oct. 16, 2012).) Issue:
16 Will the changes sought by the WaterFix Change Petition in effect initiate a new water right?

17 2. As articulated in the Hearing Officers’ October 7, 2016, Ruling, legal injury is one of
18 the key issues of Part 1 (see, October 7, 2016 Ruling on Written Testimony Outside the Scope of Part
19 1, pg. 6). Whether the petitioners have carried their burden of proof regarding legal injury has been a
20 major focus of some protestants, who appear to argue that petitioners must both identify every
21 protestants’ water rights *sua sponte* and prove no potential and legally cognizable injury to those
22 rights. This argument appears to indicate that the petitioners’ failure to accomplish both must result in
23 their petition being rejected. Issue: Must petitioners in a water rights proceeding identify those water
24 rights implicated by the petition in order for the petition to survive?

25 3. In Part 1, the Hearing Officers have not confined protestants to evidence of injury to
26 traditional and legally cognizable rights to the use of water. Instead, the Hearing Officers have
27 allowed them to offer evidence of injury to any municipal, industrial, or agricultural uses of water,
28 including impacts to “human uses that extend beyond the strict definition of legal users of water,


1 including flood control issues and environmental justice issues.” Issue: Does a protest based on a
2 claim of injury to a water right under Water Code section 1702 require a legally cognizable right to
3 the use of the water involved?

4 4. Various protestants, though perhaps not all, have argued that approval, without the
5 imposition of terms or conditions, of the WaterFix Change Petition will operate to injure their legal
6 right to the use of the water involved. Some of these protestants have rights in contract, and some
7 either hold or allegedly hold riparian or appropriative water rights. Yet some have neither. Issue:
8 Where appropriate, has each protestant provided sufficient evidence to demonstrate legal injury to an
9 identified right to the use of water implicated by the WaterFix Change Petition?

10 As stated earlier, not only do each of these issues raise a host of related and subordinate issues,
11 but each of these issues raise important questions about procedural precedent for water rights
12 proceedings in the future. The effect this precedent may have is profound and deserves not only the
13 focused attention of the Hearing Officers and their staff, but also requires the very best from each
14 party engaged in this proceeding. Addressing these issues in closing briefs for Part 1 can only serve to
15 provide important clarity as we move forward – and not only for the California WaterFix, but for the
16 responsible and durable administration of our State’s water resources.

17 Thank you for your consideration and for your service.

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19 Dated: January 31, 2017

20 
21 By: _____
22 Philip A. Williams
23 Attorney for WESTLANDS WATER DISTRICT
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STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

Westlands Water District's Recommendations Regarding Part 1 Issues

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated January 13, 2017, posted by the State Water Resources Control Board at

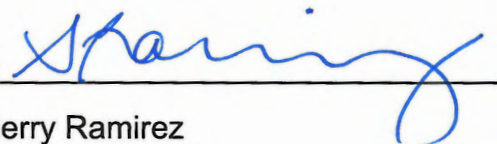
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

For Petitioners Only:

	I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: _____
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I certify that the foregoing is true and correct and that this document was executed on January 31, 2017
Date

Signature: 

Name: Sherry Ramirez

Title: Legal Secretary

Party/Affiliation: Westlands Water District

Address: 400 Capitol Mall, 28th Floor
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